

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

THOMAS WAUGH and
KIMBERLY WAUGH

Plaintiff,

V.

**ELAN FINANCIAL SERVICE and/or
CARDMEMBER SERVICES,**

Defendant,

Civil Action No. : 3:17-cv-04378

(CABELL CO. C.A. NO. 17-C-246)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § § 1332 and 1441, Defendant, U.S. Bank National Association, incorrectly sued as Elan Financial Service and/or Cardmember Services (“U.S. Bank”), by counsel, hereby files this Notice of Removal of that certain civil action filed in the Circuit Court of Cabell County, West Virginia (“Circuit Court”), styled Thomas Waugh and Kimberly Waugh v. Elan Financial Services and/or Cardmember Services, and bearing Civil Action No. 17-C-246 based on removal jurisdiction under 28 U.S.C. §1441. In support of removal, U.S. Bank states as follows:

TIMELINESS OF REMOVAL

1. Plaintiff filed this civil action on April 13, 2017, in the Circuit Court of Cabell County, West Virginia, where it is designated on the docket of that court as Civil Action No. 17-C-246. U.S. Bank was untimely served with the Summons and Complaint through the West Virginia Secretary of State's Office on October 16, 2017. Defendant received the Summons and Complaint on October 18, 2017. Pursuant to 28 U.S.C. § 1446(b), a defendant must file a notice of removal within thirty (30) days from the date that defendant receives formal service of

process. See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 119 S. Ct. 1322 (1999). “[W]here service of process is affected on a statutory agent, the time for removal does not begin to run until the defendant has actually received a copy of the process.” Lilly v. CSX Transp., Inc., 186 F. Supp. 2d 672, 675 (S.D.W. Va. 2002); see also White v. Lively, 304 F. Supp. 2d 829 (W.D. Va. 2004).

2. This Notice of Removal is filed within thirty days of actual receipt of the summons and complaint. Therefore, this notice of removal has been filed timely pursuant to 28 U.S.C. § 1446(b).

GROUND FOR REMOVAL

3. The United States District Court for the Southern District of West Virginia has jurisdiction of this case pursuant to 28 U.S.C. §§ 1332 and 1441 because Plaintiffs, West Virginia citizens, seek recovery from U.S. Bank in excess of \$75,000. U.S. Bank is a national banking association. A national banking association is deemed a citizen of the state in which it is located. 28 U.S.C. § 1348. For § 1348 purposes, a national bank is “located” at the site of its main office, as set forth in the bank’s articles of association. See Wachovia Bank v. Schmidt, 546 U.S. 303 (2006). U.S. Bank’s articles of association identify Cincinnati, Ohio as the location of U.S. Bank’s main office. Therefore, for diversity jurisdiction purposes, U.S. Bank is a citizen of Ohio.

DIVERSITY JURISDICTION

4. This Court has original jurisdiction over this civil action under the provisions of Title 28 U.S.C. §§ 1332 and 1441, and said civil action is one that may be removed to this Court by the Defendant pursuant to the provisions of Title 28 U.S.C. §§ 1441 and 1446, in that it is a civil action wherein the defendant, in good faith and upon information and belief, states by

counsel, that the amount in controversy, if proven, appears to exceed the sum or value of \$75,000.00, exclusive of costs and interest, and this action is between citizens of different States.

FILING AND SERVICE OF NOTICE

5. Copies of the process, pleadings, and orders filed in this action with the Clerk of the Circuit Court of Cabell County are filed herewith as **Exhibit A**.

6. A copy of this Notice of Removal is being filed in the Circuit Court of Cabell County, West Virginia.

7. A copy of this Notice of Removal is also being served on counsel of record for the Plaintiffs and the other defendant as reflect in the attached Certificate of Service.

FROST BROWN TODD LLC

/s/Jared M. Tully

Jared M. Tully (WVSB# 9444)

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***Counsel for U.S. Bank National
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